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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,469	08/06/2001	Jeffrey Todd Tuller	01-9343	1536
25189	7590	11/24/2004	EXAMINER	
CISLO & THOMAS, LLP 233 WILSHIRE BLVD SUITE 900 SANTA MONICA, CA 90401-1211			MATHEW, FENN C	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

ds

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/923,469	TULLER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Fenn C Mathew	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19,23,24,27-30,33 and 37-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19,23,24,27-30,33 and 37-41 is/are rejected.
- 7) ☒ Claim(s) 27-30 and 39-41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/23/2004 has been entered.

### ***Claim Objections***

2. Claims 27-30 and 39-41 are objected to because of the following informalities: Examiner is unclear as to what the term 'elongate members' refers to as the term lacks positive antecedent basis, and applicant has referred to several sets of 'members' within the claims. In claims 39-41, the term 'coupling means' lacks positive antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Marshall (U.S. 610,716). Marshall discloses an upper and lower member (E) comprising extending members, and an upper body and lower body, wherein the

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extending members are non-pivotally coupled to the upper body and lower body , wherein the extending members are non-pivotally coupled to the upper and lower body, and a plurality of semi-rigid members (C, D) providing a range of bending force, the plurality of semi-rigid members coupled to the upper member and the lower member wherein the semi-rigid members are substantially flat in a first configuration and flexed in a second configuration. As broadly claimed, Marshall discloses the extending members being curved, and the semi-rigid members securely coupled to the upper and lower member.

5. Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by Weingardt (U.S. 4,428,577). As broadly claimed Weingardt teaches a device comprising means for grasping an upper portion of the device (28), means for engaging a user's thigh (40), semi-rigid means (20) for flexibly revisiting compression, the semi rigid means coupling the grasping means and thigh engaging means, the semi-rigid means capable of spanning abdominal muscles for exercise, whereby the device is capable of allowing abdominal exercise when semi-rigid means undergoes compression, when the body is brought towards the lower body portion and feedback is provided during exercise.

6. Claims 19, 23-24, and 37-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Abdo (U.S. 6,022,203). Abdo discloses an upper grasping portion (23) positionable in front of a user, capable of being held in a user's hand, and capable of engaging a user's chest, and elongated flexible member flexible along some portion of its length positionable in front a user and connected to the upper grasping portion at a first end, and upper thigh engagement member (21), wherein the user can position the

machine in front during use and have resistance to crunching motion, and provide visual cuing (bend of the flexible member). Abdo further teaches the upper grasping members spaced apart between 0 and 180 degrees and parallel to the lower engagement member. Abdo teaches coupling means in the form of a pivoting ball joint extending from the lower member to the flexible member, and further teaches that the upper member comprises rotatable handgrips.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall alone. Marshall teaches the claimed invention except for the feature of having the semi rigid members detachably attachable to the upper and lower member. The feature of making a device detachably attachable is considered obvious since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

***Response to Arguments***

9. Applicant's arguments with respect to claims 27-30 and 33 have been considered but are moot in view of the new ground(s) of rejection.
10. Arguments with respect to claims 37 and all claims therein dependant have been considered, but are not persuasive. Applicant is reminded that apparatus claims define

what a device is and not how it is used. The structural limitations of the claims have been met by Abdo, and therefore is capable of performing the same function as the present device. In light of the broadness of the claims, Abdo is still considered relevant prior art over the present claim language.

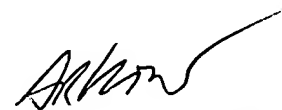
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

fcm  
November 21, 2004

  
STEPHEN R. CROW  
PRIMARY EXAMINER  
ART UNIT 332